

**SUPREME COURT MINUTES  
THURSDAY, JANUARY 17, 2002  
SAN FRANCISCO, CALIFORNIA**

S092426      The People, Plaintiff and Respondent

v.

Robert Derwin Avery, Defendant and Appellant

We reverse the judgment of the Court of Appeal and remand the matter for further proceedings consistent with this opinion, including deciding any remaining issues. We also disapprove *Marquez, supra*, 16 Cal.App.4th 115, to the extent it is inconsistent with this opinion.

Chin, J.

We Concur:

George, C.J.

Kennard, J.

Baxter, J.

Werdegar, J.

Brown, J.

Moreno, J.

S101517      In re William Baumer

on

Habeas Corpus

Pursuant to written request of petitioner the above entitled petition for writ of habeas corpus is ordered withdrawn.

1st Dist.      People, Respondent

A091689      v.

Div. 4      Nicholas Robert Zangari, Appellant

S099489      The Reporter of Decisions is directed to publish the opinion in the above-entitled appeal in the Official Reports. (See rule 976(d) and rule 978(c), Cal. Rules of Court.)

Orders were filed in the following matters extending the time within which to grant or deny a petition for review to and including the date indicated, or until review is either granted or denied:

- A090804/S102255    People v. Felimon Franco Torres – February 19, 2002.
- A096159/S102396    Judge Rice v. WCAB, City of Oakland – February 22, 2002.
- A096470/S102254    Arvind Balu v. Lake County Superior Court; People, RPI – February 15, 2002.
- B140145/S102148    People v. Harry Anthony Ward et al. – February 15, 2002.
- B142935/S102400    Teodor Marian v. Andres Gebhart – February 22, 2002.
- B143539/S102465    Committee to Save the Beverly Highland Homes Association et al. v. Beverly Highlands Homes Association Inc. et al. – February 27, 2002.
- B144822/S102472    In re Santos Y., a Person Coming Under the Juvenile Court Law; Department of Children and Family Services v. Arturo G. et al.; Grand Portage Band of Chippewa Indians – February 26, 2002.
- C037600/S102451    In re the Marriage of Betty J. and Charles Anthony Pepper; Betty J. Pepper v. Charles Anthony Pepper – February 22, 2002.
- D036330/S102497    In re the Marriage of Roy G. and A. Elaine Jordan; Roy G. Jordan v. A. Elaine Jordan – February 26, 2002.
- E028984/S102308    Kent Rogers and Marie Bro et al. – February 15, 2002.
- E030601/S102176    Ronnie Allen Hendershot v. Riverside County Superior Court; People, RPI – February 15, 2002.
- F039124/S102184    Donald Ray Young v. Tulare County Superior Court; People, RPI - February 15, 2002.

S044739 People, Respondent

v.

Anthony George Bankston, Appellant

Good cause appearing, and based upon Deputy State Public Defender Jana J. Clark's representation that she anticipates filing the request for correction of the record by March 18, 2002, counsel's request for an extension of time in which to request correction of the record in the superior court is granted to March 18, 2002. After that date, no further extension will be granted.

Counsel for appellant is ordered to serve a copy of the record correction motion on this court upon its filing in the superior court.

S059912 People, Respondent

v.

Joseph Montes, Appellant

Good cause appearing, and based upon counsel Sharon Fleming's representation that she anticipates filing the request for correction of the record by June 1, 2002, counsel's request for an extension of time in which to request correction of the record in the superior court is granted to March 19, 2002. After that date, only two further extension totaling 75 additional days are contemplated.

Counsel for appellant is ordered to serve a copy of the record correction motion on this court upon its filing in the superior court.

S101833 Kenneth Balser, Appellant

v.

Wells Fargo Bank, N.A., Respondent

On application of appellant and good cause appearing, it is ordered that the time to serve and file appellant's opening brief is extended to and including February 8, 2002.

No further extensions of time will be granted.

S093765 People, Respondent

v.

Kenneth Earl Gay, Appellant

Appellant's "Motion to Correct, Augment and Settle the Record on Appeal" is granted in part and denied in part.

To the extent that it seeks corrections and/or additional materials, including settled statements, in the superior court, the motion is granted: The superior court is directed to conduct a hearing on the corrections and/or additional materials, including settled statements,

requested in the motion; to order such corrections and/or additional materials, including settled statements, as may be required for a complete and accurate record on appeal; and to certify the record on appeal with such corrections and/or additional materials, including settled statements, as may be ordered, as accurate, on or before April 17, 2002. The clerk of this court is directed to transmit the record on appeal, filed in this court on October 30, 2001, to the superior court. The clerk of the superior court is directed to transmit the record on appeal, certified as accurate with such corrections and/or additional materials, including settled statements, as may be ordered, to this court within 10 days of certification of the record for accuracy.

In all other respects, the motion is denied.

George, C. J., was recused and did not participate.

S058489 People, Respondent

v.

Dewayne Michael Carey, Appellant

Upon request of appellant for appointment of counsel, Arlene Binder is hereby appointed to represent appellant Dewayne Michael Carey for habeas corpus/executive clemency proceedings related to the above automatic appeal now pending in this court.

S101591 In re Kyle F. & John J., Minors et al., Petitioners and Respondents

v.

Garrett S., Objector and Appellant

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Garrett S., Plaintiff and Appellant

v.

Lindsay F., a Minor, etc., Defendant and Respondent

Upon request of appellant GARRETT S. for appointment of counsel, Central California Appellate Program is hereby appointed to represent appellant on his appeal now pending in this court.

S103496 Reynaldo Martinez, Petitioner

v.

Los Angeles County Superior Court, Respondent

People, Real Party in Interest

The above-entitled matter is transferred to the Court of Appeal, Second Appellate District, for consideration in light of *Hagan v. Superior Court* (1962) 57 Cal.2d 767. In the event the Court of

Appeal determines that this petition is substantially identical to a prior petition, the repetitious petition shall be denied.

S099547      In the Matter of the Suspension of Attorneys  
For Nonpayment of Dues

Due to clerical error on the part of the State Bar of California, and good cause appearing, it is ordered that the order of suspension for nonpayment of dues filed on August 17, 2001, effective September 1, 2001, be amended *nunc pro tunc* to strike the name of Merritt David Farren.

S099547      In the Matter of the Suspension of Attorneys  
For Nonpayment of Dues

Due to clerical error on the part of the State Bar of California, and good cause appearing, it is ordered that the order of suspension for nonpayment of dues filed on August 17, 2001, effective , be amended *nunc pro tunc* to strike the name of Gregory Marell Wasson.

S101879      In re **Catherine Anne Madsen** on Discipline

It is ordered that **Catherine Anne Madsen, State Bar No. 189917**, be suspended from the practice of law in the State of California for a period of two years, that execution of the two-year suspension be stayed, and that Madsen be actually suspended from the practice of law for 180 days and until: (1) Madsen pays the \$4,225 in sanctions imposed by the Superior Court of California for the County of Los Angeles in its November 24, 1999, sanctions order in case number PC021322, *Pamela Ann Belise-Geiger v. Robert A. Geiger*, together with 10 percent simple interest per annum thereon from December 24, 1999, until paid, or if Madsen's client Robert A. Geiger or the Client Security Fund has paid any portion of such sanctions, she reimburses them for their payments together with 10 percent simple interest per annum thereon from the date or dates that Robert A. Geiger or the Client Security Fund made the payments until they are reimbursed by Madsen, and Madsen provides satisfactory proof of such payment or payments to the State Bar's probation unit in Los Angeles; (2) Madsen files and the State Bar Court grants a motion to terminate her actual suspension pursuant to rule 205, Rules of Procedure of the State Bar; and (3) if the period of Madsen's actual suspension reaches or exceeds two

years, she shows proof satisfactory to the State Bar Court of her rehabilitation, present fitness to practice, and present learning and ability in the general law in accordance with standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct. The State Bar Court is authorized to place Madsen on probation for a specified period of time as a condition for the termination of her actual suspension and to impose on her such probation conditions that it deems necessary or appropriate in light of the misconduct found in this proceeding, and Madsen is ordered to comply with any such probation conditions. Madsen is further ordered to take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order or within the period of her actual suspension, whichever is longer, and to provide satisfactory proof of passage of the examination to the State Bar's probation unit in Los Angeles within the same time period. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) Madsen is further ordered to comply with rule 955, California Rules of Court and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of this order.\* Costs are awarded to the State Bar pursuant to Business and Professions Code section 6086.10 and payable in accordance with Business and Professions Code section 6140.7.

\*(See Bus. & Prof. Code, § 6126, subd. (c).)

S102010 In re **James Baker MacDonald** on Discipline

It is hereby ordered that **James Baker MacDonald, State Bar No. 33534**, be disbarred from the practice of law and that his name be stricken from the roll of attorneys. Respondent is also ordered to comply with rule 955 of the California Rules of Court, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the date this order is effective.\* Costs are awarded to the State Bar.

\*(See Bus. and Prof. Code, § 6126, subd. (c).)

S102062 In re **John Morris Oppenheim** on Discipline

It is ordered that **John Morris Oppenheim, State Bar No. 67038**, be suspended from the practice of law for one year, that execution of the suspension be stayed, and that he be actually suspended from the practice of law for 120 days and until he makes restitution to Conan Leary (or the Client Security Fund, if appropriate) in the amount of \$8,200.00 plus 10% interest per annum

from July 7, 1998, and furnishes satisfactory proof thereof to the Probation Unit, State Bar Office of the Chief Trial Counsel, as recommended by the Hearing Department of the State Bar Court in its decision filed on August 22, 2001, as clarified by its order filed September 10, 2001; and until the State Bar Court grants a motion to terminate his actual suspension pursuant to rule 205 of the Rules of Procedure of the State Bar of California. He is also ordered to comply with the conditions of probation, if any, hereinafter imposed by the State Bar Court as a condition for terminating his actual suspension. If **John Morris Oppenheim** is actually suspended for two years or more, he shall remain actually suspended until he provides proof to the satisfaction of the State Bar Court of his rehabilitation, fitness to practice and learning and ability in the general law pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct. It is further ordered that **John Morris Oppenheim** take and pass the Multistate Professional Responsibility Examination within one year after the effective date of this order or during the period of his actual suspension, whichever is longer. (See *Segretti v. State Bar* (1976) 15 Cal.3d 878, 891, fn. 8.) It is further ordered that **John Morris Oppenheim** comply with rule 955 of the California Rules of Court, and that he perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of this order.\* Costs are awarded to the State Bar in accordance with Business & Professions Code section 6086.10 and payable in accordance with Business & Professions Code section 6140.7. \*(See Bus. and Prof. Code, § 6126, subd. (c).)

S103530      In the Matter of the Resignation of **Howard Allan Lipton**  
A Member of the State Bar of California

The voluntary resignation of **Howard Allan Lipton, State Bar No. 79301**, as a member of the State Bar of California is accepted without prejudice to further proceedings in any disciplinary proceeding pending against respondent should he hereafter seek reinstatement. It is ordered that he comply with rule 955 of the California Rules of Court and that he perform the acts specified in subdivisions (a) and (c) of that rule within 60 and 70 days, respectively, after the date this order is filed.\* Costs are awarded to the State Bar.

\*(See Bus. and Prof. Code, § 6126, subd. (c).)